

MINUTES OF AUGUST 20, 2002

COMMISSION CONFERENCE

COMMENCED: 9:35 a.m.

ADJOURNED: 8:08 p.m.

COMMISSIONERS PARTICIPATING: Chairman Jaber
Commissioner Deason
Commissioner Baez
Commissioner Palecki
Commissioner Bradley

Parties were allowed to address the Commission on items designated by double asterisks (**).

- 1 Approval of Minutes
July 23, 2002 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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 Commission Conference
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| <u>ITEM NO.</u> | <u>CASE</u> | | | | | | | | | | | | |
|-------------------|--|--|---------------------|---------------------------------|---|---------------------------------------|--|-----------|-------------------------------------|-----------|---|-----------|--|
| 2** | Consent Agenda | | | | | | | | | | | | |
| PAA | A) DOCKET NO. 020453-GU - Request for acknowledgment of change in name from Tampa Electric Company d/b/a/ Peoples Gas System, to Peoples Gas System. | | | | | | | | | | | | |
| PAA | B) Request for exemption from requirement of Rule 25-24.515(13), F.A.C., that each pay telephone station shall allow incoming calls. | | | | | | | | | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>DOCKET NO.</u></th> <th style="text-align: left;"><u>COMPANY NAME</u></th> <th style="text-align: left;"><u>PHONE NO. & LOCATION</u></th> </tr> </thead> <tbody> <tr> <td>020762-TC</td> <td>BellSouth Public Communications, Inc.</td> <td>954-972-9570 Palm Aire Garden North 201 Gardens Drive Pompano Beach</td> </tr> </tbody> </table> | <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | <u>PHONE NO. & LOCATION</u> | 020762-TC | BellSouth Public Communications, Inc. | 954-972-9570 Palm Aire Garden North 201 Gardens Drive Pompano Beach | | | | | | |
| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | <u>PHONE NO. & LOCATION</u> | | | | | | | | | | | |
| 020762-TC | BellSouth Public Communications, Inc. | 954-972-9570 Palm Aire Garden North 201 Gardens Drive Pompano Beach | | | | | | | | | | | |
| PAA | C) Applications for certificates to provide alternative local exchange telecommunications service. | | | | | | | | | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>DOCKET NO.</u></th> <th style="text-align: left;"><u>COMPANY NAME</u></th> </tr> </thead> <tbody> <tr> <td>020642-TX</td> <td>THC Merger Corp. d/b/a THC Internet Solutions</td> </tr> <tr> <td>020378-TX</td> <td>Star Phone Reconnect Incorporated</td> </tr> <tr> <td>020834-TX</td> <td>1 Com, Inc. d/b/a 1 Com South, Inc.</td> </tr> </tbody> </table> | <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | 020642-TX | THC Merger Corp. d/b/a THC Internet Solutions | 020378-TX | Star Phone Reconnect Incorporated | 020834-TX | 1 Com, Inc. d/b/a 1 Com South, Inc. | | | | |
| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | | | | | | | | | | | | |
| 020642-TX | THC Merger Corp. d/b/a THC Internet Solutions | | | | | | | | | | | | |
| 020378-TX | Star Phone Reconnect Incorporated | | | | | | | | | | | | |
| 020834-TX | 1 Com, Inc. d/b/a 1 Com South, Inc. | | | | | | | | | | | | |
| PAA | D) Applications for certificates to provide interexchange telecommunications service. | | | | | | | | | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>DOCKET NO.</u></th> <th style="text-align: left;"><u>COMPANY NAME</u></th> </tr> </thead> <tbody> <tr> <td>020349-TI</td> <td>Myatel Corporation</td> </tr> <tr> <td>020643-TI</td> <td>THC Merger Corp. d/b/a THC Internet Solutions</td> </tr> <tr> <td>020788-TI</td> <td>AllCom USA, Inc.</td> </tr> <tr> <td>020848-TI</td> <td>Esodus Communications, Inc. d/b/a Instatone</td> </tr> <tr> <td>020459-TI</td> <td>JF Technology Enterprises, Ltd., Corp.</td> </tr> </tbody> </table> | <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | 020349-TI | Myatel Corporation | 020643-TI | THC Merger Corp. d/b/a THC Internet Solutions | 020788-TI | AllCom USA, Inc. | 020848-TI | Esodus Communications, Inc. d/b/a Instatone | 020459-TI | JF Technology Enterprises, Ltd., Corp. |
| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | | | | | | | | | | | | |
| 020349-TI | Myatel Corporation | | | | | | | | | | | | |
| 020643-TI | THC Merger Corp. d/b/a THC Internet Solutions | | | | | | | | | | | | |
| 020788-TI | AllCom USA, Inc. | | | | | | | | | | | | |
| 020848-TI | Esodus Communications, Inc. d/b/a Instatone | | | | | | | | | | | | |
| 020459-TI | JF Technology Enterprises, Ltd., Corp. | | | | | | | | | | | | |

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2** Consent Agenda

(Continued from previous page)

PAA E) Applications for certificates to provide pay telephone service.

| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> |
|-------------------|--|
| 020787-TC | Robert P. Schmidt d/b/a Public Payphone Company |
| 020498-TC | Prarthana Inc. d/b/a Country Quick Stop |
| 020619-TC | Jorge E. Zapata |
| 020844-TC | Violet Davis |
| 020835-TC | Dennis H. Brooks |
| 020534-TC | Jaroth, Inc. d/b/a Pacific Telemanagement Services |

PAA F) Request for cancellation of interexchange telecommunications certificate.

| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | <u>CERT. NO.</u> | <u>EFFECTIVE DATE</u> |
|-------------------|---------------------------|------------------|-----------------------|
| 020365-TI | Interoute-Wholesale, Inc. | 5169 | 02/21/02 |

PAA G) DOCKET NO. 020847-TP - Request, due to Chapter 11 bankruptcy, for approval of transfer of control of Birch Telecom, Inc., parent company of Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch (holder of ALEC Certificate No. 7552 and IXC Certificate No. 7610), from BTI Ventures, LLC to a group of investment banks including LB 1 Group, Inc. and Bear Stearns Corporate Lending, Inc.

PAA H) DOCKET NO. 020798-TC - Request for name change on PATS Certificate No. 5355 from NEFCOM Technologies, Inc. [NEFCOM] to Northeast Florida Long Distance Co., Inc. d/b/a NEFCOM Communications [NEFCOM Communications] due

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| | |
|-----|----------------|
| 2** | Consent Agenda |
|-----|----------------|

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to merger of NEFCOM into NEFCOM Communications, both wholly owned subsidiaries of NEFCOM, Inc.

RECOMMENDATION: The Commission should approve the action requested in the dockets referenced above and close these dockets.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

3**

Docket No. 011351-EI - Proposed revisions to Rule 25-6.044, F.A.C., Continuity of Service, and Rule 25-6.0455, F.A.C., Annual Distribution Service Reliability Report. (Deferred from 8/6/02 Commission Conference; revised recommendation filed.)

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: GCL: Moore
ECR: Breman, Hewitt, D. Lee, Matlock, McNulty

ISSUE 1: Should the Commission propose revisions to Rules 25-6.044 and 25-6.0455, F.A.C., governing investor-owned electric utility continuity of service and the annual distribution service reliability report?

RECOMMENDATION: Yes.

ISSUE 2: If no request for hearing or comments are filed, should the proposed rule be filed for adoption with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes. The docket should be closed if no requests for hearing or comments are filed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

4**

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Deason

Staff: GCL: Gervasi
ECR: Fletcher, Merchant, Willis

ISSUE 1: Should Aloha's proposed settlement agreement be approved?

RECOMMENDATION: No. Aloha's proposed settlement agreement should be rejected. The Commission should instead dispose of this matter as set forth in Issues 2 - 7 of this recommendation.

DECISION: The recommendation was approved.

ISSUE 2: Should Aloha be ordered to show cause, in writing within 21 days, why it should not be fined for failure to charge its approved service availability charges and to timely file a revised tariff sheet reflecting those charges, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes?

RECOMMENDATION: Yes. Aloha should be ordered to show cause, in writing within 21 days, why it should not be fined \$1,000 for the apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. The order to show cause should incorporate the conditions stated in the analysis portion of staff's August 8, 2002 memorandum.

DECISION: The recommendation was approved with the modification that the fine is \$10,000. Additionally, the order is to include language to ensure that Aloha complies with all other obligations set out in Order PSC-01-0326-FOF-SU.

ITEM NO.

CASE

4**

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

(Continued from previous page)

ISSUE 3: Should Aloha be authorized to backbill customers for the approved service availability charges that it should have collected for connections made between May 23, 2001 and April 16, 2002, and, if not, should any such backbilled amounts collected be refunded, with interest?

RECOMMENDATION: Aloha should not be authorized to backbill customers for the approved service availability charges that it should have collected for connections made between May 23, 2001 and April 16, 2002. Aloha should be required to refund any such backbilled amounts received and any increased service availability charges collected prior to April 16, 2002, calculated with interest in accordance with Rule 25-30.360, Florida Administrative Code. The amount of interest should be based on the 30-day commercial paper rate for the appropriate time period. The refund should be made within 30 days of the effective date of the final order in this docket and the utility should be required to file refund reports consistent with Rule 25-30.360, Florida Administrative Code. With respect to persons who prepaid the erroneous charge in order to reserve capacity, but who did not connect to Aloha's system prior to April 16, 2002, Aloha should charge its approved \$1,650 service availability charge provided notice was received pursuant to Rule 25-30.475(2), Florida Administrative Code.

DECISION: The recommendation was denied. With the cautions articulated at the conference, Aloha will be allowed to backbill the developers in question and exercise its ability to collect the approved service availability charges. Chairman Jaber dissented.

ISSUE 4: Should Aloha be required to impute on its books as though collected any amount of the CIAC that it should have collected between May 23, 2001 and April 16, 2002?

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4**

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

(Continued from previous page)

RECOMMENDATION: Yes. Aloha should be required to impute \$157,341 of CIAC on its books as though collected.

DECISION: The recommendation was denied. 100% of service availability charges that should have been billed is recognized as CIAC.

ISSUE 5: Should the Limited Partners' Petition to Intervene be granted?

RECOMMENDATION: Yes. However, because the Limited Partner's substantial interests are only affected by the Commission's decision on Issues 3 and 6, intervention should be limited to those issues. This decision should be without prejudice to the Limited Partners to file a complaint regarding the other issues raised in their Petition which are unrelated to the issues addressed in this docket.

DECISION: The recommendation was approved.

ISSUE 6: Should Aloha be required to file a replacement tariff sheet reflecting its approved service availability charges, to be stamped effective for connections made on or after April 16, 2002?

RECOMMENDATION: Yes. Aloha should be required to file a replacement tariff sheet within 10 days of the effective date of the order arising from this recommendation, reflecting its approved service availability charges. The tariff sheet should be stamped effective for connections made on or after April 16, 2002 and the affirmative relief sought by the Limited Partners, which is that the effective date of the revised service availability charge tariff should be on or after July 19, 2002, should be denied. Further, no developer or builder should be billed the approved service availability charges unless notice has been

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4**

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

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provided to the developer or builder, pursuant to Rule 25-30.475(2), Florida Administrative Code. In accordance with H. Miller & Sons, that notice must be received prior to connection and no later than the date of connection. Aloha should also be required to provide notice of the Commission's order arising from this recommendation to all developers to whom it has sent a backbilling letter and to any persons who have either requested service or inquired about service with the utility in the past 12 months. Aloha should submit the proposed notices for staff's administrative approval within 10 days of the effective date of the order.

DECISION: The recommendation was approved with the modification that Aloha is to file a replacement tariff sheet within 10 days of the issuance date of the order arising from this recommendation.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issues 1-6, no timely protests are filed to the proposed agency action issues, and Aloha responds to the show cause order by paying the required fine, refunds any backbilled amounts received calculated with interest in accordance with Rule 25-30.360, Florida Administrative Code, within 30 days of the effective date of the order, files refund reports consistent with Rule 25-30.360, Florida Administrative Code, files a replacement tariff sheet reflecting its approved service availability charges and provides the required notices within 10 days of the effective date of the order, this docket should be closed administratively. If Aloha fails to comply with the Commission's directives, this docket should remain open for further action. If Aloha responds to the show cause order

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4**

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

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and requests a hearing, or a protest is received to a proposed agency action issue by a substantially affected person within 21 days of the issuance date of the order, this docket should remain open for final disposition.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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5**

Docket No. 020353-TP - Petition for acknowledgment of adoption of existing agreement between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc., by Winstar Communications, LLC.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Bradley

Staff: GCL: Elliott
CMP: Simmons

ISSUE 1: Should the Commission grant the Petition For Acknowledgment of Adoption of Existing Agreement Between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc., by Winstar Communications?

RECOMMENDATION: Yes. The Commission should grant the Petition For Acknowledgment of Adoption of Existing Agreement Between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc., by Winstar Communications.

ISSUE 2: Should the Commission direct staff to handle these agreements in the manner consistent with Section 2.07.C.15 of the Administrative Procedures Manual (APM)?

RECOMMENDATION: Yes. The Commission should direct staff to handle these agreements in the manner consistent with Section 2.07.C.15 of the APM. If the Commission approves staff's recommendation in Issue 2, Section 2.07.C.15 of the APM should be updated as reflected in Attachment A of staff's August 8, 2002 memorandum.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. Since no other issues need to be addressed by this Commission, this docket should be closed upon issuance of the Commission Order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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6**

Docket No. 020639-EI - Complaint of Norman Anderson and/or Anthony Parks on behalf of NW Landing Realty against Florida Power & Light Company. (Deferred from the 8/6/02 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: GCL: Christensen, Echternacht
CAF: Plescow

ISSUE 1: Should the Commission dismiss Complaint No. 379477E, filed on behalf of N.W. Landing Realty by Norman Anderson, later assumed by Anthony Parks?

RECOMMENDATION: Yes. The Commission should dismiss Complaint No. 379477E, filed on behalf of N.W. Landing Realty by Norman Anderson, later assumed by Anthony Parks.

DECISION: The recommendation was approved.

ISSUE 2: Should the Commission continue to receive and process complaints filed by Anthony E. Parks or filed by others where staff has a reasonable belief that the complaint has been filed by Mr. Parks or on his behalf?

RECOMMENDATION: No. Staff recommends that the Commission no longer receive or process any complaints regarding any industry that the Commission regulates that involve Mr. Anthony E. Parks or others filing on his behalf unless Mr. Parks submits his complaint in writing and it is signed by a member of the Florida Bar, in good standing, indicating the attorney's Florida Bar number and who certifies that the complaint is not frivolous. Staff also recommends that all outstanding complaints involving Mr. Parks be closed. Further, staff recommends that the Commission grant staff

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|-----------------|--|
| 6** | Docket No. 020639-EI - Complaint of Norman Anderson and/or Anthony Parks on behalf of NW Landing Realty against Florida Power & Light Company. |

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administrative authority to close any future complaints involving Mr. Parks that fail to meet the above described criteria without further action of the Commission.

DECISION: The recommendation was approved. The Commission's original decision was reconsidered and subsequently reapproved. Chairman Jaber and Commissioner Bradley dissented on Issue 2.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. Because no further action is necessary, this docket should be closed.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

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7**

Docket No. 020578-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Palecki

Staff: CMP: Barrett, Platt
GCL: Banks, Dodson

ISSUE 1: Should BellSouth's Motion to Dismiss FCCA's Petition for Expedited Review and Cancellation of BellSouth's Key Customer Tariff be granted?

RECOMMENDATION: No. BellSouth's Motion to Dismiss should be denied.

ISSUE 2: If the Commission approves staff's recommendation in Issue 1, should BellSouth's 2002 Key Customer Program/June filing (T-020595) be suspended and set for hearing?

RECOMMENDATION: Yes. BellSouth's 2002 Key Customer Program/June filing (T-020595) should be suspended and set for hearing. Additionally, this docket should be consolidated with Docket No. 020119-TP for purposes of hearing.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issues 1 and 2, this docket should remain open pending further proceedings. However, if the Commission denies staff's recommendation on Issue 1, this docket should be closed, since no further action would be required.

DECISION: The recommendations were approved with the modification to Issue 2 that the tariff will not be suspended and that the tariff docket will be consolidated with the proceeding already underway and will be handled on an expedited basis.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

8**PAA

Docket No. 020666-TI - Compliance investigation of Sky Telecom, Inc. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Fordham

ISSUE 1: Should the Commission impose a \$25,000 penalty on Sky Telecom, Inc. for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should impose a \$25,000 penalty on Sky Telecom, Inc. for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Sky Telecom, Inc. fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing prepaid calling services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Public Convenience and Necessity.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This

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| 8**PAA | Docket No. 020666-TI - Compliance investigation of Sky Telecom, Inc. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required. |

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docket should then be closed administratively upon either receipt of the payment of the penalty, or upon referral of the penalty to the Office of the Comptroller for collection if the penalty is not paid within fourteen calendar days after issuance of the Consummating Order.

DECISION: This item was deferred.

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9**PAA

Docket No. 020668-TI - Compliance investigation of Christian Telecom Network, LLC for apparent violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries. (Deferred from August 6, 2002 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Dodson

ISSUE 1: Should the Commission impose a \$25,000 penalty on Christian Telecom Network, LLC for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should impose a \$25,000 penalty on Christian Telecom Network, LLC for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Christian Telecom Network, LLC fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Convenience and Necessity.

ISSUE 2: Should the Commission impose a \$10,000 penalty on Christian Telecom Network, LLC for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

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9**PAA

Docket No. 020668-TI - Compliance investigation of Christian Telecom Network, LLC for apparent violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries. (Deferred from August 6, 2002 conference; revised recommendation filed.)

(Continued from previous page)

RECOMMENDATION: Yes. The Commission should impose a \$10,000 penalty on Christian Telecom Network, LLC for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should then be closed administratively upon either receipt of the payment of the penalties, or upon referral of the penalties to the Office of the Comptroller for collection if the penalties are not paid within fourteen calendar days after issuance of the Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

10**PAA

Docket No. 020357-TP - Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for purchase by LecStar Telecom, Inc. (holder of ALEC Certificate No. 7315 and IXC Certificate No. 7352) of the local and long distance residential customers located in BellSouth territory, and those related telecommunications assets, of NuVox Communications, Inc. (holder of ALEC Certificate No. 5638 and IXC Certificate No. 5608).

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Pruitt
GCL: Elliott

ISSUE 1: Should the Commission approve the acquisition by LecStar Telecom, Inc. of the NuVox Communication, Inc. residential local and long distance customer base in BellSouth service territory and relieve LecStar Telecom, Inc. in this instance of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

11**PAA

Docket No. 020757-TI - Request for approval of waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to purchase of customer base of North American Communications Control, Inc. (holder of IXC Cert. No. 4463) by A.R.C. Networks, Inc. d/b/a InfoHighway (holder of IXC Certificate No. 4707).

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Williams
GCL: Elliott

ISSUE 1: Should the Commission relieve A.R.C. Networks, Inc. d/b/a InfoHighway in this instance of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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| <u>ITEM NO.</u> | <u>CASE</u> |
|-----------------|---|
| 12**PAA | Docket No. 020774-TI - Petition for waiver of surety bond requirement in Rule 25-24.490(2), F.A.C., by Dominion Telecom, Inc. Critical Date(s): None Commissioners Assigned: Full Commission Prehearing Officer: Administrative Staff: CMP: Hawkins ECR: Lester GCL: Elliott <u>ISSUE 1</u> : Should Dominion Telecom, Inc. be relieved of the bond requirement of Rule 25-24.490(2), Florida Administrative Code, as provided in the rule? <u>RECOMMENDATION</u> : Yes. Dominion Telecom, Inc. should be relieved of the bond requirement of Rule 25-24.490(2), Florida Administrative Code, as provided in the rule. <u>ISSUE 2</u> : Should this docket be closed? <u>RECOMMENDATION</u> : Yes. If no person whose substantial interests are affected by the Commission's Proposed Agency Action files a protest within 21 days of the issuance date of the order, this docket should be closed upon the issuance of a Consummating Order. |

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

13**

Docket No. 011286-TP - Request for approval of consummation of transaction arising out of Chapter 11 status whereby all Florida operations and assets of Teligent Services, Inc., holder of ALEC Certificate No. 4804, IXC Certificate No. 4850, and AAV Certificate No. 4707, will be assigned from Teligent, Inc. to TAC License Corp., a wholly owned subsidiary of Teligent Acquisition Corp.; and request for assignment and name change on ALEC Certificate No. 4804, IXC Certificate No. 4850, and AAV Certificate No. 4707 from Teligent to TAC.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Williams
GCL: Elliott

ISSUE 1: Should Order No. PSC-01-2154-PAA-TP, issued November 5, 2001, and Order No. PSC-01-2437-CO-TP, issued December 13, 2001, be vacated in their entirety?

RECOMMENDATION: Yes. The Commission should vacate Order No. PSC-01-2154-PAA-TP, issued November 5, 2001, and Order No. PSC-01-2437-CO-TP, issued December 13, 2001, in their entirety.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon issuance of the Commission's Order to vacate Order No. PSC-01-2154-PAA-TP, issued November 5, 2001, and Order No. PSC-01-2437-CO-TP, issued December 13, 2001.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

14**

Docket No. 020277-GU - Petition of Florida Division of Chesapeake Utilities Corporation for authority to convert all remaining sales customers to transportation service and to exit merchant function.

Critical Date(s): 60-day suspension date waived

Commissioners Assigned: Full Commission
Prehearing Officer: Deason

Staff: CMP: Makin, Bulecza-Banks
GCL: Stern

ISSUE 1: Should the Commission approve the Florida Division of Chesapeake Utilities Corporation's petition for authority to convert all remaining sales customers to transportation service and to exit the merchant function?

RECOMMENDATION: Yes. The Commission should approve Chesapeake's petition, effective August 20, 2002, the date of the Commission vote in this matter.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed within 21 days of the issuance of the Order by a person whose substantial interests are affected, the docket should be closed upon the issuance of a Consummating Order.

DECISION: This item was deferred.

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| <u>ITEM NO.</u> | <u>CASE</u> |
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| 15 | <p>Docket No. 020566-EI - Petition for approval of recovery schedule for two Gannon Station generating units, effective January 1, 2002, by Tampa Electric Company.</p> <p>Critical Date(s): None</p> <p>Commissioners Assigned: Full Commission Prehearing Officer: Palecki</p> <p>Staff: ECR: Meeks, P. Lee GCL: C. Keating</p> <p><u>ISSUE 1</u>: Should Tampa Electric Company be allowed to implement its proposed recovery schedule on a preliminary basis?</p> <p><u>RECOMMENDATION</u>: Yes. Staff recommends that TECO be allowed to implement the proposed recovery schedule for Gannon Units 1 and 2, as shown on Attachment A of staff's August 8, 2002 memorandum, on a preliminary basis. The effect of this proposal would increase annual depreciation expense by approximately \$712,000, based on a January 1, 2002, investment and reserve. The resultant expense should be trued up when a recovery schedule is established by final action.</p> <p><u>ISSUE 2</u>: What should be the implementation date for the new recovery schedule?</p> <p><u>RECOMMENDATION</u>: January 1, 2002.</p> <p><u>ISSUE 3</u>: Should this docket be closed?</p> <p><u>RECOMMENDATION</u>: No. This docket should remain open to allow a complete analysis and thorough review of TECO's proposed recovery schedule.</p> |

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

ITEM NO.

CASE

16 Docket No. 020384-GU - Petition for rate increase by Tampa Electric Company d/b/a Peoples Gas System.

Critical Date(s): 8/26/02 (60-day suspension date)
2/27/03 (8-month effective date)

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: ECR: Slemkewicz, E. Bass, D. Draper, Kenny, L.
Romig, Springer, Wheeler
GCL: Vining

ISSUE 1: Should the request for a permanent increase in rates and charges be suspended for Peoples?

RECOMMENDATION: Yes. Staff recommends that the requested permanent increase in rates and charges of \$22,615,228 be suspended for Peoples.

ISSUE 2: Is Peoples' proposed interim test year rate base of \$471,679,000 appropriate?

RECOMMENDATION: No. The appropriate interim test year rate base for Peoples is \$469,965,000.

ISSUE 3: Is Peoples' proposed interim test year net operating income of \$34,530,000 appropriate?

RECOMMENDATION: No. The appropriate interim test year net operating income for Peoples is \$36,755,000.

ISSUE 4: Is Peoples' proposed interim return on equity of 10.25% and overall rate of return of 8.02% appropriate?

RECOMMENDATION: No. Based on staff's adjusted capital structure, the appropriate return on equity is 10.25% and the appropriate overall rate of return is 8.01% for interim purposes.

ISSUE 5: Is Peoples' proposed interim revenue expansion factor of 1.6435 appropriate?

RECOMMENDATION: Yes. Peoples' proposed interim revenue expansion factor of 1.6435 is appropriate.

ISSUE 6: Should Peoples' requested interim revenue increase of \$5,421,000 be granted?

RECOMMENDATION: No. After making the above adjustments, the interim revenue increase for Peoples should be \$1,461,000.

ISSUE 7: How should the interim revenue increase for Peoples be distributed among the rate classes?

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|----|---|
| 16 | Docket No. 020384-GU - Petition for rate increase by Tampa Electric Company d/b/a Peoples Gas System. |
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RECOMMENDATION: Any interim revenue increase authorized should be applied evenly across the board to all rate classes based on their base rate revenues, as required by Rule 25-7.040, Florida Administrative Code, and should be recovered on a cents-per-therm basis. The interim rates should be made effective for all meter readings made on or after thirty days from the date of the vote and decision herein.

ISSUE 8: What is the appropriate security to guarantee the amount subject to refund?

RECOMMENDATION: A corporate undertaking in the amount of \$730,500 guaranteed by Peoples is appropriate. Interim rates are subject to refund with interest, pending a final order in the permanent rate relief request.

ISSUE 9: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to process the company's requested rate increase.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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ITEM NO.

CASE

17**PAA

Docket No. 011682-SU - Application for increase in wastewater service availability charges in Lee County by Forest Utilities, Inc.
Docket No. 011683-SU - Petition by Forest Utilities, Inc. for establishment of allowance for funds used during construction (AFUDC) rate in Lee County.

Critical Date(s): 8/31/02 (8-month effective date)

Commissioners Assigned: Full Commission
Prehearing Officer: Deason

Staff: ECR: Fletcher, Edwards, Merchant
GCL: Holley

ISSUE 1: What is the appropriate ROE for Forest?

RECOMMENDATION: The utility's ROE should be reduced to 11.34% with a range of 10.34% to 12.34%.

ISSUE 2: What is the appropriate AFUDC rate for Forest?

RECOMMENDATION: An annual AFUDC rate of 10.73% should be approved as reflected on Schedule No. 1 of staff's August 8, 2002 memorandum. The discounted monthly rate should be 0.893828%. The approved rate should be applicable for eligible construction projects beginning October 1, 2001.

ISSUE 3: Should the utility's tariff filing to modify its system capacity charge be approved as filed?

RECOMMENDATION: No. Tariff Sheets Nos. 24.0 and 27.0 filed on December 31, 2001 should be denied. The Commission should discontinue the utility's existing system capacity charge and approve a plant capacity charge of \$933 per residential ERC and a plant capacity charge of \$5.488 per gallon for all others. Also, the Commission should approve a main extension charge of \$1,043 per residential ERC and a main extension charge of \$6.135 per gallon for all others. Further, the Commission should issue the order as Proposed Agency Action (PAA). If there is no timely protest to the Commission's PAA by a substantially affected person, the utility should file the appropriate revised tariff sheets and a proposed notice within twenty days of the effective date of the PAA Order. The revised tariff sheets should be approved administratively upon staff's verification that the tariffs are consistent with the Commission's decision and

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17**PAA

Docket No. 011682-SU - Application for increase in wastewater service availability charges in Lee County by Forest Utilities, Inc.

Docket No. 011683-SU - Petition by Forest Utilities, Inc. for establishment of allowance for funds used during construction (AFUDC) rate in Lee County.

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the utility's proposed notice is adequate. If the revised tariff sheets are approved, the service availability charges should become effective for connections made on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, providing the appropriate notice has been made. The notice shall be mailed or hand-delivered to all persons in the service area who have filed a written request for service within the past 12 calendar months or who have been provided a written estimate for service within the past 12 calendar months. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice.

ISSUE 4: Should Docket No. 011682-SU be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on the previous issues and no timely protest on those issues is received upon expiration of the protest period, the PAA Order on the service availability charges will become final upon the issuance of a Consummating Order. Once staff has verified that the utility's revised tariff sheets are consistent with the Commission's decision and that the appropriate notice has been made, Docket No. 011682-SU should be closed administratively. If a timely protest is filed, staff recommends the following: 1) the docket should remain open pending the resolution of the protest; 2) the utility's proposed tariff should go into effect, subject to refund, pending resolution of the protest; 3) the utility also should file an escrow agreement to guarantee the difference between the utility's existing and proposed system capacity charge collected subject to refund until the protest is resolved; and 4) pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should be required to provide a report by the 20th day of each month indicating the monthly and total amount of

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17**PAA

Docket No. 011682-SU - Application for increase in wastewater service availability charges in Lee County by Forest Utilities, Inc.
Docket No. 011683-SU - Petition by Forest Utilities, Inc. for establishment of allowance for funds used during construction (AFUDC) rate in Lee County.

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service availability charges collected subject to refund as of the end of the preceding month.

ISSUE 5: Should Docket No. 011683-SU be closed?

RECOMMENDATION: If no timely protest on the Commission-approved AFUDC rate is received upon expiration of the protest period, the PAA Order on the AFUDC rate will become final upon the issuance of a Consummating Order and Docket No. 011683-SU should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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| 18** | <p>Docket No. 011073-WS - Application for rate increase in Broward County by Ferncrest Utilities, Inc.</p> <p>Critical Date(s): 9/1/02 (5-month effective date)</p> <p>Commissioners Assigned: Full Commission Prehearing Officer: Deason</p> <p>Staff: ECR: Fletcher, Merchant GCL: Harris</p> <p><u>ISSUE 1</u>: Should Ferncrest's petition to withdraw its application for a rate increase be acknowledged? <u>RECOMMENDATION</u>: Yes.</p> <p><u>ISSUE 2</u>: Should the docket be closed? <u>RECOMMENDATION</u>: Yes. This docket should be closed because no further action is required.</p> |

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

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CASE

19**

Docket No. 011379-SU - Application for transfer of Certificate No. 422-S in Gulf County from Gulf Aire Properties d/b/a Gulf Aire Wastewater Treatment Plant to ESAD Enterprises, Inc. d/b/a Beaches Sewer System.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: ECR: Clapp, E. Bass, Rieger
GCL: Harris

ISSUE 1: Should the transfer of Certificate No. 422-S from Gulf Aire to ESAD Enterprises, Inc. be approved?

RECOMMENDATION: Yes. The transfer of Certificate No. 422-S from Gulf Aire to ESAD should be approved. However, ESAD should be formally put on notice of its obligation to comply with all of the requirements of Chapter 367, Florida Statutes, and Rule 25-30, Florida Administrative Code. The failure to do so may result in the initiation of show cause proceedings and the possible imposition of sanctions, including penalties, fines, and possible revocation of the certificate. ESAD should be responsible for all future RAFs and annual reports. A description of the territory being transferred is appended to staff's August 8, 2002 memorandum as Attachment A.

PAA ISSUE 2: What is the rate base of Gulf Aire at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value at the time of transfer, is \$7,371 for the wastewater system as of December 1, 2000.

PAA ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment was requested; however, an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.

ISSUE 4: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes. ESAD should continue charging the rates and charges approved for Gulf Aire, with the exception of AFPI for treatment facilities, until authorized to change

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19**

Docket No. 011379-SU - Application for transfer of Certificate No. 422-S in Gulf County from Gulf Aire Properties d/b/a Gulf Aire Wastewater Treatment Plant to ESAD Enterprises, Inc. d/b/a Beaches Sewer System.

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by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

PAA

ISSUE 5: Should the utility be required to discontinue collection of Allowance for Funds Prudently Invested (AFPI) for treatment facilities and to refund the overcollection of AFPI?

RECOMMENDATION: Yes. The utility should be required to discontinue collection of AFPI for treatment facilities and to refund overcollection of AFPI. The refunds should be made with interest pursuant to Rule 25-30.360, Florida Administrative Code, to each customer who paid the excess AFPI.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: No. If no timely protest by a substantially affected person is received to the proposed agency action issues, a Consummating Order should be issued upon the expiration of the protest period. The docket should remain open until the utility provides verification that the refund recommended in Issue 5 has been properly completed, at which time the docket should be closed administratively.

DECISION: This item was deferred.

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20 Docket No. 020233-EI - Review of GridFlorida Regional
Transmission Organization (RTO) Proposal.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Jaber

Staff: MMS: Bass, Buchan, Butler, Collins, Groom, Lowe,
Noriega
CMP: Futrell
ECR: Ballinger, Bohrmann, Breman, E. Draper, Floyd,
Harlow, Hewitt, Kummer, Baxter, Springer,
Wheeler
GCL: C. Keating, Brubaker

ISSUE 1: Do the following changes to the structure and
governance of the GridFlorida proposal comply with
Commission Order No. PSC-01-2489-FOF-EI:

- a. Acting by written consent by the Board of Directors;
and
- b. Participating in or listening to Board of Directors'
conference calls?

RECOMMENDATION: Yes. The Commission should find that the
changes made to the structure and governance of the
GridFlorida proposal are in compliance with Commission Order
No. PSC-01-2489-FOF-EI.

DECISION: The recommendation was approved.

ISSUE 2A: Do the following changes to the structure and
governance of the GridFlorida proposal comply with
Commission Order No. PSC-01-2489-FOF-EI:

- a. Quantity of members and composition of the Board
Selection Committee;
- b. Role of the Stakeholder Advisory Committee in regard
to the Board of Directors and the Board Selection
Committee;
- c. Adequacy of Information Policy to provide guidance
on public versus confidential RTO information;
- d. Exclusion of the Board of Directors from the
Sunshine Requirements;

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| 20 | <p>Docket No. 020233-EI - Review of GridFlorida Regional Transmission Organization (RTO) Proposal.</p> <p>(Continued from previous page)</p> <ul style="list-style-type: none">e. Applicants "causing" candidates for the Board of Directors to become Directors;f. Guidelines to determine discretionary closed meetings of the Board of Directors; andg. Elimination of "Planning Bill of Rights"? <p><u>RECOMMENDATION</u>: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 2B</u>: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:</p> <ul style="list-style-type: none">a. Board, committee, subcommittee, and working group meetings being open to the public; andb. Sufficiency of the Proposed Code of Conduct? <p><u>RECOMMENDATION</u>: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.</p> <p><u>DECISION</u>: The recommendation was approved.</p> |
| **PAA | <p><u>ISSUE 2C</u>: Should the Commission order GridFlorida to make additional changes to its structure and governance related to:</p> <ul style="list-style-type: none">a. Board, committee, subcommittee, and working group meetings being open to the public; andb. Sufficiency of the Proposed Code of Conduct? <p><u>RECOMMENDATION</u>: Yes. The Commission should order GridFlorida to clarify that all meetings of the Advisory Committee, subcommittees and working groups are noticed and open to the public. In addition, the Commission should order GridFlorida to clarify the Code of Conduct by inserting, on page 8, Section K, the words "and</p> |

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| 20 | Docket No. 020233-EI - Review of GridFlorida Regional Transmission Organization (RTO) Proposal. |
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GridFlorida's Independent Compliance Auditor to" at the end of the sentence between "FRC" and "audit"; and in Section II.D.1, the words "GridFlorida Independent Compliance Auditor" should replace the words "Board of Directors of GridFlorida."

DECISION: The recommendation was approved.

ISSUE 2D: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. MISO and GridFlorida Planning Protocol;
- b. Eminent domain;
- c. Initial adoption of Participating Owners' existing Ten Year Site Plans;
- d. Requirement to evaluate generation and demand side management alternatives;
- e. Quality and quantity of public information;
- f. Ad Hoc Working Groups;
- g. The FRCC and NERC role in the RTO;
- h. Exemption from certain operating requirements; and
- i. 69kV demarcation point?

RECOMMENDATION: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida RTO proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.

DECISION: The recommendation was approved.

ISSUE 2E: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings;
- b. Transmission provider project rejection; and

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| 20 | <p>Docket No. 020233-EI - Review of GridFlorida Regional Transmission Organization (RTO) Proposal.</p> <p>(Continued from previous page)</p> <p>c. Competitive bidding process for transmission construction projects?</p> <p><u>RECOMMENDATION</u>: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.</p> <p><u>DECISION</u>: The recommendation was approved.</p> |
| **PAA | <p><u>ISSUE 2F</u>: Should the Commission order GridFlorida to make additional changes to the planning and operations aspects related to:</p> <p>a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings;</p> <p>b. Transmission provider project rejection; and</p> <p>c. Competitive bidding process for transmission construction projects?</p> <p><u>RECOMMENDATION</u>: Yes. The Commission should order GridFlorida to adopt the language identified in the analysis portion of staff's August 8, 2002 memorandum to clarify: that CBM is taken into account when calculating the ATC used by GridFlorida; that the requirement to reject projects is clearly conferred upon the transmission provider; and that the bidding process is not biased towards Pos.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 2G</u>: Does the proposed transmission rate structure consisting of charges for (1) existing embedded facilities, (2) an adder to recover TDU facilities not included in the zonal rate, (3) new network facilities, and (4) Grid Management comply with Commission Order No. PSC-01-2489-FOF-EI?</p> <p><u>RECOMMENDATION</u>: No. The proposal preserves Commission jurisdiction over only existing bundled retail transmission costs, and only for the initial five-year period of RTO</p> |

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20 Docket No. 020233-EI - Review of GridFlorida Regional
Transmission Organization (RTO) Proposal.

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operations. The Commission's December 20 Order provides that the Commission should retain jurisdiction over the total cost of transmission to retail customers on a going-forward basis. At the end of the initial five-year operation of the RTO, the Commission should review the transmission rate structure, given the operation of the RTO and the competitive market conditions in Florida.

DECISION: The recommendation was approved.

ISSUE 3A: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Comparability of service to all LSEs; and
- b. POs and Third Party Agreements?

RECOMMENDATION: Yes. The Commission should find that the changes to the planning and operations aspects of the GridFlorida proposal were necessary and therefore comply with Commission Order No. PSC-01-2489-FOF-EI.

DECISION: The recommendation was approved.

ISSUE 3B: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Attachment T cutoff date; and
- b. POMA termination provision?

RECOMMENDATION: No. The Commission should find that the original language in Attachment T was appropriate in setting December 15, 2000, as the demarcation date and that the new language should be stricken. The Commission should find that Sections 4.3 and 5.6 of the POMA should be eliminated.

DECISION: The recommendation was approved. The order regarding Section a. is to be issued as PAA; Section b. is final action.

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| 20 | Docket No. 020233-EI - Review of GridFlorida Regional Transmission Organization (RTO) Proposal. (Continued from previous page) |
| **PAA | <u>ISSUE 4A</u> : Should the Commission approve the proposed method for mitigating the cost shifts resulting from the loss of revenues under existing long-term transmission agreements? <u>RECOMMENDATION</u> : Yes. The Commission should, however, reexamine the potential impact of the phase-out of existing long-term contract revenues at the end of the initial five-year period of RTO operations. <u>DECISION</u> : The recommendation was approved. |
| **PAA | <u>ISSUE 4B</u> : Does the proposed method for alleviating cost shifting from the elimination of short-term transmission revenues comply with Commission Order No. PSC-01-2489-FOF-EI? <u>PRIMARY RECOMMENDATION</u> : No. Transmission owners should be fully compensated for the loss of short-term transmission revenues for the first five years of RTO operation. <u>ALTERNATIVE RECOMMENDATION</u> : Yes. The proposed method for alleviating cost shifting from the elimination of short-term transmission revenues complies with the Commission's December 20 Order. It provides immediate benefits to the participants in the RTO and should be implemented. Any adversely affected utility must balance the benefits of participating in the RTO with the commensurate costs. <u>DECISION</u> : The primary recommendation was denied and the alternative was approved. |
| **PAA | <u>ISSUE 4C</u> : Should the Commission approve the proposed method to recover incremental transmission costs as included in the GridFlorida proposal? <u>RECOMMENDATION</u> : Yes. While the Commission's December 20 Order did not make a determination of the most appropriate mechanism for recovery of costs associated with GridFlorida, staff believes sufficient information is available for the Commission to make such a determination. The Commission should authorize each applicant to recover its incremental |

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| 20 | Docket No. 020233-EI - Review of GridFlorida Regional Transmission Organization (RTO) Proposal. |

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transmission costs approved by the FPSC through the capacity cost recovery clause.

DECISION: The recommendation was approved.

ISSUE 5: Does the market design included in the modified GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI?

RECOMMENDATION: No. The revised market design includes (1) financial transmission rights for transmission capacity allocation; (2) unbalanced schedules with a voluntary day-ahead market; (3) market clearing prices for balancing energy and congestion management; and (4) sharing of gains on real-time energy sales. As such, the revised GridFlorida market design is not in compliance with Commission Order No. PSC-01-2489-FOF-EI, which required (1) physical transmission rights; (2) balanced schedules; and (3) get-what-you-bid pricing for balancing energy and congestion management. The revisions proposed by GridFlorida may be beneficial to retail ratepayers and assist in the efficient operation of the RTO. In order to adequately justify the new provisions, the GridFlorida Companies should be directed to file a petition not later than 30 days from the Commission's vote on this issue. Such a filing will allow the Commission to conduct an expedited evidentiary hearing on the merits of the revised market design proposal and would be consistent with the requirements of Order No. PSC-01-2489-FOF-EI.

DECISION: The recommendation was approved with the modification that the GridFlorida companies are to file petitions and testimony within 30 days of this vote. The parties are encouraged to identify areas for consensus and advise staff of areas for stipulation to allow a vote on this matter as quickly as possible. Additionally, any protested PAA issues will be rolled into this proceeding.

The order on this decision is to be expedited.

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20 Docket No. 020233-EI - Review of GridFlorida Regional
Transmission Organization (RTO) Proposal.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run on those issues resolved as final agency action, or upon issuance of a consummating order on those issues resolved by proposed agency action, whichever occurs later. If no person whose substantial interests are affected by proposed agency action taken by the Commission on any issue in this docket files a protest, the docket should be closed after the time for filing an appeal has run on the issues resolved as final agency action, or upon issuance of a consummating order on the issues resolved by proposed agency action, whichever occurs later.

DECISION: The recommendation was denied. The docket is to remain open for completion of the hearing.

Commissioners participating: Jaber, Deason, Baez, Palecki, Bradley

ITEM NO.

CASE

21 Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: Jaber, Deason, Baez, Palecki
Prehearing Officer: Jaber

Staff: CMP: Bloom, Simmons
 GCL: Banks, Dodson, B. Keating

ISSUE 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

- a) What is the Commission's jurisdiction in this matter?
- b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?
- c) If so, should the default definition of a local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

PRIMARY RECOMMENDATION: The local calling area should be defined through negotiations between the parties. While staff believes the Commission has jurisdiction to define local calling areas, staff does not believe a compelling case can be made to exercise the Commission's jurisdiction to designate a default in the event negotiations are unproductive.

ALTERNATIVE RECOMMENDATION: Alternative staff believes that the Commission has jurisdiction to define local calling areas, and recommends that the originating carrier's retail local calling area be used as the default local calling area for purposes of reciprocal compensation.

DECISION: The primary recommendation was denied and the alternative approved.

ITEM NO.

CASE

21 Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

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ISSUE 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

- a) Does the Commission have jurisdiction to establish bill-and-keep?
- b) What is the potential financial impact, if any, on ILECs and ALECs of bill-and-keep arrangements?
- c) If the Commission imposes bill-and-keep as a default mechanism, will the Commission need to define generically "roughly balanced"? If so, how should the Commission define "roughly balanced"?
- d) What potential advantages or disadvantages would result from the imposition of bill-and-keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?

RECOMMENDATION: No. Staff does not recommend the imposition of a single compensation mechanism governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties negotiating a compensation mechanism. While staff believes the Commission has the jurisdiction to establish bill-and-keep subject to either a determination or a presumption that traffic between carriers is roughly balanced, the record of this proceeding does not support such a determination and argues against a presumption of balance. Should the Commission determine that the imposition of a bill-and-keep default is desirable, staff recommends the Commission define roughly balanced to mean the traffic imbalance is less than 10 percent between carriers over a three-month period.

DECISION: The recommendation was approved.

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| 21 | Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996. |
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ISSUE 19a: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the expiration of the time to file a motion for reconsideration or an appeal since no further action is required by the Commission.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Palecki

ITEM NO.

CASE

22 Docket No. 010098-TP - Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: Jaber, Deason, Palecki
Prehearing Officer: Deason

Staff: GCL: Banks, Fudge
 CMP: Dowds

ISSUE 1: Should the Motion for Clarification or Reconsideration filed by Florida Digital Network, Inc. (FDN) be granted?

RECOMMENDATION: No. FDN has not identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the Motion for Clarification or Reconsideration should be denied.

ISSUE 2: Should the Motion for Reconsideration, or in the Alternative, Clarification filed by BellSouth Telecommunications, Inc. be granted?

RECOMMENDATION: No. BellSouth has not identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the Motion for Reconsideration, or in the Alternative, Clarification should be denied.

ISSUE 3: Should the Motion to Strike filed by BellSouth Telecommunications, Inc. be granted?

RECOMMENDATION: No. The Motion to Strike should be denied.

ISSUE 4: Should the cross-motion for reconsideration filed by Florida Digital Network Inc. be granted?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 3, then the cross-motion should be denied. However, if the Commission denies staff on Issue 3, this issue is rendered moot.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issues 1, 2, and 4, the parties should be

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ITEM NO.

CASE

22

Docket No. 010098-TP - Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.

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required to file their final interconnection agreement within 30 days after the issuance of the Order from this recommendation, conforming with Order No. PSC-02-0765-FOF-TP, in accordance with Order No. PSC-02-0884-PCO-TP, Order Granting Extension of Time to File Interconnection Agreement. Thereafter, this Docket should remain open pending approval by the Commission of the filed agreement.

DECISION: This item was deferred.

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ITEM NO.

CASE

23 Docket No. 001382-WS - Application for staff-assisted rate case in Lake County by Pennbrooke Utilities, Inc. (Recommendation withdrawn from August 6, 2002 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Deason, Baez, Palecki
Prehearing Officer: Palecki

Staff: ECR: Fitch, Davis
 GCL: Cibula

ISSUE 1: Should the utility's request for an extension to complete the required pro forma plant addition be approved?
RECOMMENDATION: Yes. The utility's request for an extension to complete the required pro forma plant addition should be approved. The utility expects to complete the remaining plant improvement by November 30, 2002. If the utility does not complete the pro forma by November 30, 2002, staff will bring a recommendation before the Commission to reduce rates associated with the pro forma addition.

ISSUE 2: Should this docket be closed?
RECOMMENDATION: No. This docket should not be closed. It should remain open to allow the utility additional time to complete the pro forma plant addition to the water system. If the utility completes the plant addition by November 30, 2002, the docket should be closed administratively upon staff's verification that the addition has been made.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Baez, Palecki